

**Employee Benefit Plan
Section 401(k) Requirements
(Worksheet Number 12 - Determination of Qualification)**

INSTRUCTIONS - All items must be completed. A "Yes" answer generally indicates a favorable conclusion is warranted while a "No" answer indicates a problem exists. Please use the space on the worksheet to explain any "No" answer. Numbers in brackets refer to EDS paragraph numbers. See Document 7335, Explanation Number 12, for guidance in completing this form. Part X is new. Other additions since the prior version of this document have been underlined.

The technical principles in this worksheet may be changed by future regulations or guidelines

Name of Plan

I. Applicability

	Plan Reference	Yes	No	N/A
a. Does the plan have a cash or deferred arrangement (CODA)? [1201, 1202] If "No," skip this worksheet. If "Yes," go on to b.				
b. Is this plan a profit-sharing plan, a stock bonus plan, a pre-ERISA money purchase plan or a rural co-operative plan? [1201, 1202] If "No," see explanations. If "Yes," go on to II.				

II. Contributions

a. Does the plan provide each participant with an option to elect to have a contribution made to the plan on his/her behalf instead of receiving cash and is such election made before the time at which the employee may receive the amount? [1203]				
b. Does the plan separately account for elective contributions? [1204]				
c. Does the plan provide that elective contributions will not exceed the limit imposed by section 402(g) under all the plans of the employer? [1206]				

III. Coverage and Participation

a. Do the employees eligible to benefit under the CODA satisfy the applicable coverage provisions of section 410(b)? [1207]				
b. Does the plan allow employees to make elective contributions after no more than one year of service? [1208]				

IV. Vesting

a. Are elective contributions nonforfeitable when made, regardless of a participant's age or service? [1209]				
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V. Discrimination

a. Does the plan either:				
(i) include the actual deferral percentage (ADP) test set forth in section 401 (k)(3) and provide that it will meet the test, [1211, 1212, 1213] or				
(ii) incorporate the test by reference, including whether it is using the prior or current year testing method, and provide that it will meet the test, [1211, 1212, 1213] or				
(iii) contain SIMPLE provisions? If the plan contains SIMPLE provisions, do not complete V.b., VI., VII.d.-g. and VIII.				
(iv) <u>contain safe harbor CODA provisions? If the plan contains safe harbor CODA provisions, do not complete Parts V.b.(i), VII.d.-g. and IX of this worksheet. See also worksheet #11.</u>				

b. If the terms of the plan set forth the ADP test rather than incorporate it by reference, does the plan, for purposes of this test:	Plan Reference	Yes	No	N/A
(i) take into account the actual deferral ratios of all eligible employees; [1215, 1216]				
(ii) take elective contributions into account for a plan year only if attributable to compensation that would be received by the employee during the plan year or earned during the plan year and received within 2½ months after the end of the plan year; [1218]				
(iii) take a contribution into account for a plan year only if it is allocated to the participant's account on a day within the plan year; [1220]				
(iv) treat contributions made under plans that are aggregated for purposes of section 401 (a)(4) or 410(b) as made under a single plan; [1221]				
(v) aggregate all arrangements under which a highly compensated employee (HCE) is eligible to make elective contributions for purposes of the HCE's actual deferral ratio; and [1223]				
(vi) determine the ADPs of the HCEs and of all other eligible employees using the relevant plan year? [1225]				
c. Are elective contributions available to eligible employees on a nondiscriminatory basis? [1229]				
VI. Qualified Nonelective Contributions (QNECs) and Qualified Matching Contributions (QMACs) (Complete if the terms of the plan provide that QNECs or QMACs are to be treated as elective contributions for purposes of the ADP test)				
a. If the plan provides QNECs or QMACs, are these contributions:				
(i) immediately vested, without regard to a participant's age and service; [1274]				
(ii) distributed only under the distribution rules applicable for elective contributions? [1274]				
b. Are QNECs and QMACs treated as elective contributions only if the conditions described in section 1.401(k)-1(b)(5) of the regulations are satisfied? [1276]				
VII. Distributions and Corrections				
a. Does the plan allow distributions of elective contributions only if one of the following occurs: [1231, 1232, 1233, 1234]				
(i) Retirement, death, disability, or separation from service,				
(ii) Attainment of age 59½ (profit sharing, stock bonus, rural cooperative plans only),				
(iii) Participant hardship (profit sharing, stock bonus, rural cooperative plans only),				
(iv) Excess contributions (see VII.e. and f.) or participant allocation to the plan of excess deferrals (see VII.c.),				

(v) Termination of the plan without establishment or maintenance of another DC plan (other than an ESOP, SEP or SIMPLE IRA plan), or one of the events specified in sections 401(k)(10)(A)(ii) and (iii), that is, the plan does not allow distributions of contributions merely by reason of completion of a stated period of plan participation or the lapse of a fixed period of years?	Plan Reference	Yes	No	N/A
b. If the plan is a profit sharing, stock bonus, or rural cooperative plan which allows hardship distributions, are such distributions made only in accordance with objective standards, set forth in the plan, giving the criteria for determining whether:				
(i) the participant has an immediate and heavy financial need, [1235] and				
(ii) the distribution is needed to alleviate the hardship? [1237]				
c. Does the plan provide a mechanism by which the excess deferrals may be distributed to the participant? If no, check "N/A".				
d. If the plan is using the current year testing method, does it provide that, in the event it would otherwise fail the ADP test, the employer will or may make additional qualified nonelective contributions (QNECs) or additional qualified matching contributions (QMACs) in order to satisfy the test? If no, check "N/A".				
e. Does the plan provide a mechanism by which elective contributions by the highly compensated employees in excess of the amount allowed in the ADP test may be distributed or recharacterized or have an alternative method that ensures satisfaction of the ADP test?				
f. If the plan provides that excess contributions will be distributed:				
(i) Is the amount of the excess contributions to be distributed to individual highly compensated employees determined by using the "ratio leveling" method? [1239,1240]				
(ii) Are distributions of excess contributions determined using the "dollar leveling" method? [1241]				
(iii) If the answer to VII.c. was "Yes," does the plan reduce excess contributions to be distributed by excess deferrals previously distributed? [1247]				
(iv) Does the plan properly determine income to be distributed? [1249]				
(v) Will the distribution be made no later than the end of the following plan year? [1251]				
g. If the plan provides for recharacterization:				
(i) Does the plan permit employee contributions in addition to those resulting from recharacterization? [1253]				
(ii) Is the amount to be recharacterized determined using the "ratio leveling" method? [1239 and 1240]				
(iii) Are recharacterizations of excess contributions determined using the "dollar leveling" method? [1241]				
(iv) If the answer to VII.c. was "Yes," does the plan reduce excess contributions to be recharacterized by excess deferrals previously distributed? [1247]				

(v) Will recharacterization occur within 2½ months of the end of the plan year? [1251]	Plan Reference	Yes	No	N/A
(vi) Will recharacterized amounts remain subject to the distribution restrictions applicable to elective contributions? [1255]				
VIII. Definition of Highly Compensated Employee/Compensation				
a. Does the plan define a highly compensated employee (HCE) in accordance with section 414(q)? [1257, 1258]				
b. For this definition, does the plan:				
(i) define determination year, look-back year, compensation, and, if applicable, top-paid group; and				
(ii) apply the aggregation rules of section 414? [1261, 1262, 1263]				
c. Does the plan define compensation in and specify the period used to determine an employee's compensation for purposes of the ACP test? [1271, 1272]				
IX. SIMPLE Plan Provisions (Complete if the plan contains SIMPLE provisions.)				
a. Does the plan prohibit eligible employees from participating in another plan of the employer? [1278]				
b. Is the plan year the calendar year? [1279]				
c. Does the plan define compensation properly? [1280]				
d. With respect to contributions under the plan:				
(i) Are elective contributions limited to \$6,000, as adjusted? [1281]				
(ii) Is the employer required to either match employees' elective contributions (limited to 3% of compensation) or contribute 2% of compensation to all eligible employees? [1282]				
(iii) Are no other contributions permitted under the plan? [1283]				
(iv) Are all contributions under the plan nonforfeitable when made? [1284]				
e. Are employees allowed to make, amend or terminate deferral elections at the proper times? [1285]				
f. Is the employer required to give proper notice of the plan to employees? [1286]				
X. Safe Harbor CODA provisions (complete if the plan contains Safe Harbor CODA Provisions)				
a. Does the plan provide for one of the following:				
(i) the safe harbor basic matching formula,				
(ii) a safe harbor enhanced matching formula,				
(iii) safe harbor nonelective contributions,				

(iv) an amendment that changes from the current year ADP (and, if applicable ACP) testing method to a safe harbor nonelective contribution method for the plan year, or	Plan Reference	Yes	No	N/A
(v) an amendment that changes from a safe harbor matching contribution method to the current year ADP (and, if applicable, ACP) testing method during the plan year? [1287, 1288, 1289, 1290, 1291]				
b. If the plan contains a safe harbor matching contribution formula, does the plan contain only permissible restrictions on elective contributions by NHCEs? [1292, 1293, 1294]				
c. Does the plan provide that safe harbor matching contributions or nonelective contributions are immediately nonforfeitable? [1295]				
d. Does the plan contain the appropriate restrictions on distributions of safe harbor matching and nonelective contributions and earnings? [1296]				
e. Is the plan year 12 months long, or a permissible shorter length if it is a newly established plan, or, if applicable, does the plan meet the special requirements applicable to a CODA that is added to an existing profit-sharing, stock bonus or pre-ERISA money purchase pension plan for the first time during a plan year (and the similar rules for matching contributions added to a defined contribution plan for the first time, if applicable)? [1297]				
f. Does the plan use the correct definition of compensation? [1298]				
g. Does the plan provide that safe harbor matching contributions must be made on behalf of all NHCEs who are eligible employees and who make elective contributions or that safe harbor nonelective contributions must be made on behalf of all NHCEs who are eligible employees? [1299]				
h. Does the plan provide that proper notice is given (satisfying content and timing requirements), including the additional plan provisions applicable to plans that change their testing methods during the plan year as described in X.a. (iv) and (v) above? [12aa]				
i. If safe harbor contributions will be made to another defined contribution plan, (i) is the name of the other plan specified in this plan, (ii) does the other plan meet the same requirements in satisfying the safe harbor contribution requirements, and (iii) does the plan have the same plan year (for plan years beginning on or after January 1, 2000)? [12ab]				

j. Does the plan comply with all other applicable requirements of section 401 (k) and other sections of the Internal Revenue Code? (Complete other applicable portions of Worksheet #12 for the CODA requirements, and if section 401 (m) applies, see Worksheet #11.) [12ac]	Plan Reference	Yes	No	N/A

Comments